



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

January 2, 2007

VIA ELECTRONIC FILING
& HAND DELIVERED ORIGINAL

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Synergy Business Park, Saluda Building
101 Executive Center Drive
Columbia, SC 29210

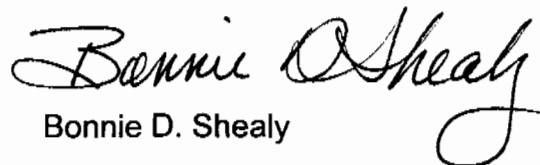
Re: PNG Communications d/b/a Powernet
Docket No. 2006-303-C
Our File No. 30251-0001

Dear Mr. Terreni:

Enclosed for filing please find the PNG Communications, Inc.'s motion for expedited review of its pending CLEC application. PNG was certificated by the Commission to offer interexchange services in South Carolina in 1996 and the verified testimony of Mr. Dennis Packer in support of the application was filed with the Commission on December 4, 2006. The Office of Regulatory Staff and Counsel for the South Carolina Telephone Coalition do not object to the motion. By copy of this letter we are serving the same on all parties of record. If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.


Bonnie D. Shealy

/bds

Enclosure

cc/enc: David Butler, Hearing Examiner (via email)
Dennis Packer, General Counsel (via email)
Ms. Kate Storch (via email)
Margaret Fox, Esquire (via email & U.S. Mail)
Wendy B. Cartledge, Staff Attorney ORS (via email & U.S. Mail)

**THIS DOCUMENT IS AN EXACT DUPLICATE, WITH THE EXCEPTION
OF THE FORM OF THE SIGNATURE, OF THE EFILED COPY
SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS
ELECTRONIC FILING INSTRUCTIONS**

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2006-303-C

| | |
|--|---|
| APPLICATION OF PNG COMMUNICATIONS, INC., d/b/a |) |
| POWERNET GLOBAL COMMUNICATIONS, d/b/a |) |
| CROSSCONNECT FOR A CERTIFICATE OF PUBLIC |) |
| CONVENIENCE AND NECESSITY TO PROVIDE |) |
| FACILITIES BASED LOCAL EXCHANGE |) |
| TELECOMMUNICATIONS SERVICES AND FOR |) |
| FLEXIBLE REGULATION OF ITS LOCAL EXCHANGE |) |
| SERVICES AND ALTERNATIVE REGULATION OF |) |
| ITS INTEREXCHANGE SERVICES |) |

MOTION FOR EXPEDITED REVIEW OF APPLICATION

Comes now the Applicant PNG Telecommunications, Inc., doing business as PowerNet Global Communications, also doing business as CrossConnect ("PNG or "Applicant"), who hereby moves pursuant to S.C. Code Reg. 103-820, 103-840 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission") that the Commission perform an expedited review of PNG's application for a Certificate of Public Convenience and Necessity to authorize PNG to provide local exchange telecommunications services throughout the State of South Carolina. Order No. 96-675 authorized PNG to offer intrastate, interexchange telecommunications services to customers throughout the State. On May 23, 2002, the Commission issued Order No. 2002-393 which approved an amendment to the company's authority to allow it to conduct business in South Carolina as PowerNet Global Communications. On July 22, 2005, the Commission issued Order No. 2005-402 in which PNG was granted the authority to use CrossConnect as a trade name in South Carolina.

***THIS DOCUMENT IS AN EXACT DUPLICATE, WITH
THE EXCEPTION OF THE FORM OF THE SIGNATURE,
OF THE E-FILED COPY SUBMITTED TO THE COMMISSION
IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS***

PNG requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. In support of this motion PNG would show the following:

FACTUAL BACKGROUND

1. The Applicant published notice of the filing of the application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was November 13, 2006.

2. On or about November 9, 2006, the South Carolina Telephone Coalition intervened in the proceeding. The South Carolina Telephone Coalition and PNG agreed to a stipulation which is attached and incorporated by reference as Exhibit 1. As a result of the Stipulation, the South Carolina Telephone Coalition does not oppose the application or the motion for expedited review.

3. The Office of Regulatory Staff requested that PNG make certain revisions to its proposed tariff which PNG has agreed to make. A summary of the tariff revisions PNG is attached and incorporated by reference as Exhibit 2. The Office of Regulatory Staff has indicated that it does not oppose the application and has consented to the motion. No other comments or petitions to intervene have been filed.

4. PNG is an Ohio corporation whose principal place of business is in Fairfield, Ohio. PNG was authorized to offer interexchange telecommunications services to customers throughout the State in Docket No. 96-145-C, Order No. 96-675, dated September 27, 1996. It has been successfully operating as a competitive provider of interexchange services to consumers in South Carolina since 1996.

5. PNG seeks authority to provide competitive local exchange services in all areas of South Carolina subject to the terms of the stipulation with the South Carolina Telephone Coalition.

PNG is currently certificated in the continental United States to provide long distance services and is authorized to provide competitive local exchange telecommunications services in the states of California, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Nevada, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and Wisconsin. PNG currently has applications pending in Alabama, Arizona and Tennessee.

6. PNG's financial, technical, and managerial qualifications are more fully described in the verified testimony of Dennis Packer which was filed with the Commission on December 4, 2006.

ARGUMENT

7. PNG filed its application pursuant to S.C. Code Ann. § 58-9-280(B) seeking a certificate of Public Convenience and Necessity to provide local exchange telecommunications services. Section 58-9-280(B) provides that "[a]fter notice and an *opportunity to be heard*, the Commission may grant a certificate to operate as a telephone utility...to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC...." S.C. Code Ann. § 58-9-280(B) (Supp. 2005). Notice has been published as required by the Commission and any interested party, including PNG has thus had an *opportunity* for a hearing. Therefore, the Commission has satisfied the statutory requirements. PNG submits that the Commission now has the discretion under Section 58-9-280(B) to consider PNG's application without a full, evidentiary hearing.

8. PNG seeks expedited review of its application on the grounds that (1) the South Carolina Administrative Procedures Act ("APA") grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if PNG waives the right to a hearing when there is no disputed material issue of fact, and (3) notice and the opportunity to present

written evidence is sufficient to provide the procedural due process protection required under the APA.

9. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); Anonymous v. State Board of Medical Examiners, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

The APA provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. § 1-23-320(a) (Supp. 2005). The APA defines "contested case" as "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(2) (Supp. 2005).

The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2005).

Notice of the company's application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided as required by the APA and S.C. Code Ann. Section 58-9-280(B). The South Carolina Telephone Coalition, has withdrawn its opposition after entering amending the stipulation with PNG and the Office of Regulatory Staff has consented to the motion.

PNG is currently certified to provide long distance telecommunication services in South Carolina and has been offering interexchange telecommunications services since it received its certificate. Therefore, the Commission is aware of the technical, managerial and financial background relied upon by PNG in its application. PNG respectfully requests that the Commission apply section 1-23-320(f) of the APA and informally dispose of the proceeding without requiring a formal hearing.

10. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296.

PNG is requesting the hearing be waived and there are no intervenors opposing its certification in the proceeding. PNG's financial, technical and managerial qualifications are outlined in the testimony of Mr. Packer. The Commission has previously held a hearing concerning PNG's fitness to provide telecommunications services in the state. Therefore, there is no material issue of fact to be decided at a formal hearing.

11. Notice and the opportunity to present written evidence would satisfy due process requirements for the PNG application. Case law in other jurisdictions supports the proposition that holding a hearing is not required in all situations. One case noted that the "flexibility of the scope of due process is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure....There are times when no more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." Bartlett v. Krause, 551 A.2d 710, 722 (Ct. Sup. Ct. 1988).

Another case noted that "[d]ue process does not always require an administrative agency to

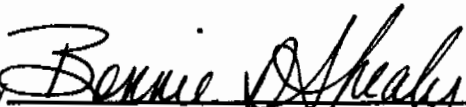
hold an evidentiary hearing before it goes about the business it was created to conduct....Sometimes nothing more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." In the Matter of the Request for Solid Waste Utility Customer Lists, 524 A.2d 386, 393 (N.J. Sup. Ct. 1987). In Request for Solid Waste, the Court held that since "the proceeding did not involve any disputed facts, a full evidentiary hearing would have been unnecessary and burdensome, both fiscally and administratively, to the agency." Id.

PNG has presented the information required under S.C. Code § 58-9-280(B) in its application and the testimony of Dennis Packer. Since the Office of Regulatory Staff has consented to the motion and the Stipulation with the South Carolina Telephone Coalition settled the only intervention in this docket, PNG asserts that a full evidentiary hearing on its application is unnecessary.

WHEREFORE, PNG respectfully requests that the Commission informally dispose of the proceeding without holding a hearing and grant its request for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services and that the Commission waive the regulatory requirements requested in this motion.

Dated this 2nd day of January, 2007.

ROBINSON, McFADDEN & MOORE, P.C.

By 

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Columbia, South Carolina 29202
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Telephone (803) 779-8900
Facsimile (803) 252-0724

Attorneys for PNG Communications, Inc.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2006-303-C

Re: Application of PNG Communications, Inc.)
d/b/a PowerNet Global Communications)
d/b/a CrossConnect for a Certificate of)
Public Convenience and Necessity to Provide)
Facilities-based Local Exchange Services in)
the State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and PNG Communications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect ("PNG Communications") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose PNG Communications' Application. SCTC and PNG Communications stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to PNG Communications, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. PNG Communications stipulates and agrees that any Certificate which may be granted will authorize PNG Communications to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. PNG Communications stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. PNG Communications stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until PNG Communications provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, PNG Communications acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. PNG Communications stipulates and agrees that, if PNG Communications gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then PNG Communications will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. PNG Communications acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

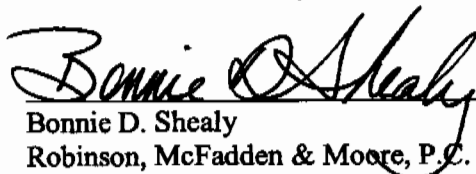
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and PNG Communications, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. PNG Communications agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. PNG Communications hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

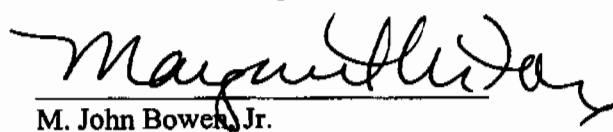
AGREED AND STIPULATED to this 17th day of November, 2006.

PNG Communications, Inc.


Bonnie D. Shealy
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202
(803)779-8900

Attorneys for PNG Communications, Inc.

South Carolina Telephone Coalition:


M. John Bower, Jr.
Margaret M. Fox
Post Office Box 11390
Columbia, South Carolina 29202
(803) 799-9800

Attorneys for the South Carolina
Telephone Coalition

182960

MCNAIR LAW FIRM, P.A.
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1301 Gervais Street (29201)
COLUMBIA, SOUTH CAROLINA 29211

COPY
Filed: D. Duke
Dept: SA
Date: 11-17-06
Time: 9:40 pm

TELEPHONE (803) 799-9800
FACSIMILE (803) 376-2219

November 17, 2006

The Honorable Charles Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211

Re: Application of PNG Communications, Inc. d/b/a PowerNet Global Communications d/b/a CrossConnect for a Certificate of Public Convenience and Necessity to Provide Facilities-based Local Exchange Telecommunications Services in the State of South Carolina (SCPSC Docket No. 2006-303-C)

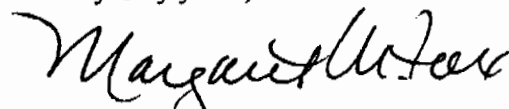
Dear Mr. Terreni:

Please find enclosed for filing on behalf of the South Carolina Telephone Coalition (the "Coalition") an original and ten (10) copies of an executed Stipulation between the Coalition and the Applicant, in the above-referenced docket. By copy of this letter and Certificate of Service appended to the Stipulation, I am serving all parties of record.

Please clock in a copy of the Stipulation and return it by our courier.

Should you have any questions with respect to this matter, please do not hesitate to contact me.

Very truly yours,


Margaret M. Fox

Enclosures

cc: Bonnie D. Shealy, Esquire
Florence P. Belser, Esquire

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2006-303-C

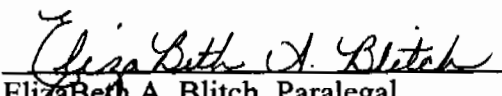
Re: Application of PNG Communications, Inc.)
d/b/a PowerNet Global Communications)
d/b/a CrossConnect for a Certificate of)
Public Convenience and Necessity to Provide)
Facilities-based Local Exchange Services in)
the State of South Carolina)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as follows:

Bonnie D. Shealy, Esquire
Robinson, McFadden & Moore, P.C.
Post Office Box 94
Columbia, South Carolina 29202

Florence P. Belser, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211.


ElizaBeth A. Blitch, Paralegal
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

November 17, 2006
Columbia, South Carolina

PNG Telecommunications, Inc.
d/b/a PowerNet Global Communications

Docket No. 2006-303-C Tariff Changes

Section 2 – Definitions – Original Page Nos. 7 through 12

PNG will add “ORS” for the South Carolina Office of Regulatory Staff and provide definitions for “Noncompetitive Tariffed Services” and “Competitive Services”.

3.6 – Liability of the Company / 3.6.3 – Indemnification

3.6.3 (I) – Original Page No. 23 - Errors in Billing :

The language shall be modified as follows:

In the event of Company billing errors that result in overpayment by the Customer, the Company will comply with R.103-623, 103-623.1 and 103-623.2 of Commission Rules and Regulations. The refund provisions will be contingent upon the circumstances of the overbilling defined by the above-referenced Rules and Regulations.

3.18 – Deposits /3.18.1 – General 3.18.1 (C) – Original Page No. 34

The language shall be modified as follows

- C. Company will pay simple interest on deposits at the rate as prescribed by the Commission and to each Customer required to make such deposit for the time it is held by Company, pursuant to South Carolina Public Service Commission Reg. 103-623.
- D. The interest shall be accrued annually and payment of such interest shall be made to the customer at least every two (2) years and at the time the deposit is returned. The deposit shall cease to draw interest on the date it is returned, the date service is terminated, or on the date notice is sent to the customer's last known address that the deposit is no longer required.

3.18.3 – Services for Which Non-Payment May or May Not Result in Discontinuance

3.18.3 (A) – Original Page 35

The Company will add definitions for the terms “competitive tariffed services” and “noncompetitive tariffed services” as requested and will correct references to the “Public Service Commission of South Carolina.”

3.19.1 – Disconnection or Suspension of Service With Notice

3.19.1 (I) – Original Page No. 37

The language shall be modified as follows

For use of foul or profane language over the Service as set forth in S.C.
Code Section 16-17-430;

3.19.3 – Duration of Suspension – Original Page No. 39

The language shall be modified as follows:

The Company may continue Suspension of Service until all charges due have been paid and all violations have ceased. The maximum period of suspension before disconnection is seventy-two (72) hours. During the period of such Suspension all monthly recurring charges apply. Should the Customer fail to comply with the Company's instructions during the Suspension period, Service will be Discontinued and the Customer must pay the Denied Service Restoral Charge of this Tariff in addition to all applicable monthly Service charges before Service will be restored. If service is disconnected and not restored after a suspension, the date of disconnection is considered to be the date service was suspended for purposes of determining the amount due on the final bill.

3.23 – Taxes – Original Page No. 42

The language shall be modified as follows:

All state and local taxes (including but not limited to franchise fees, excise tax, sales tax, municipal tax) and regulatory charges such as the End User Subscriber Line Charge are listed as separate line items and are not included in the quoted rates.

3.24 – Disputed Bills

3.24.2 – Original Page No. 43

The Company replace "Commission" with the "Office of Regulatory Staff" or "ORS".

3.24.2 (E) – Original Page No. 44

The Company will revise the 3.24.2 (E) to state the proper agency and department to file unresolved disputes:

The address and telephone number of the ORS for the filing of unresolved dispute is:

South Carolina Office of Regulatory Staff
Consumer Services Division
P.O. Box 11263
Columbia, SC 29211
Telephone Number: (803) 737-5230
Toll Free: 1-800-922-1531
Fax Number: (803) 737-4750

3.34 – Promotional Offerings – Original Page No. 54

PNG will revise the last sentence of this subsection as follows:

The Company will submit its Promotions by letter to the Commission Staff and the ORS outlining the promotion, listing the tariffed item being promoted, and the promotion's start and end dates in lieu of filing language in the tariff.

4.1.2 (A) Residential Basic Local Exchange Services – Original Page No. 57

4.1.2 (A) (1), (2), & (3)

The Company will revise the first sentence in each of these sections to clarify that the plans provide customers with unlimited local calls and thirty minutes (or 120 minutes) of unlimited intraLATA, interLATA and interLATA interstate long distance calling.

4.1.3 – Directory Listings - General

4.1.3 (B) – Length of Directory White Page Listing – Original Page No. 58

PNG will add the following sentence to 4.1.3:

Directory listings are provided pursuant to Commission reg. 103-631. PNG has requested that it be allowed to make arrangement with the incumbent local exchange carrier to publish PNG's customers information in the incumbent's directory. PNG is aware that the ILECs have already established the font size and listing requirements for their directories.

4.1.11 (D) (2) – Installation, Moves, and Other Charges – Original Page 80

PNG will delete the “missed appointment charge” since it is a deregulated item.

Maximum Prices and Price List

PNG will include its current prices in Section 4 and add maximum prices in Section 6 of its final tariff.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2006-303-C**

APPLICATION OF PNG COMMUNICATIONS, INC., d/b/a)
POWERNET GLOBAL COMMUNICATIONS, d/b/a)
CROSSCONNECT FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
FACILITIES BASED LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES AND FOR)
FLEXIBLE REGULATION OF ITS LOCAL EXCHANGE)
SERVICES AND ALTERNATIVE REGULATION OF)
ITS INTEREXCHANGE SERVICES)

CERTIFICATE OF SERVICE

This is to certify that I, Vickie V. Pietschker, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **MOTION FOR EXPEDITED REVIEW OF APPLICATION** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Wendy B. Cartledge, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Dated at Columbia, South Carolina this 2nd day of January, 2007.



Vickie V. Pietschker